
FINAL RECOMMENDATIONS FOR THE STRUCTURAL PEST CONTROL BOARD

RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS (DEPARTMENT)

ISSUE #1. (CONTINUE REGULATION OF THE INDUSTRY?) Should the licensing and regulation of structural pest control operators, field representatives, and applicators, and the registration of structural pest control companies by the Board be continued?

Recommendation #1: *The Joint Committee and the Department recommends the continued regulation of the structural pest control industry.*

Comments: Pest control presents potential public safety concerns. The use of poisonous chemicals and testing for structural damage requires a minimum level of competence and understanding of the public safety risks. Further, consumers may suffer serious financial harm if pest inspections and treatment are performed poorly. Because the average consumer does not possess the knowledge to determine whether a structural pest control operator is practicing in a safe and appropriate manner, the state needs to continue regulating this industry.

ISSUE #2. (CONTINUE WITH THE BOARD?) Should the Board be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department?

Recommendation #2: *The Joint Committee and the Department recommends that the Structural Pest Control Board be continued.*

Comments: Representatives from the Department of Pesticide Regulation and County Agricultural Commissioners sit on several of the Board's committees where pesticide issues and enforcement matters are considered for regulatory or legislative discussion. The Department is unaware of any evidence that another structure would provide greater professional regulation or consumer protection than does the existing Board.

ISSUE #3. (IMPLEMENT DECEPTIVE ADVERTISING PROGRAM?) Are there efforts being made by the Board to adequately protecting consumers against deceptive advertising by pest control companies?

Recommendation #3: *The Board has provided a plan to the Legislature to deal with the problem of deceptive advertising by pest control companies. The Joint Committee and the Department recommends that the Board should complete implementation of the plan it presented to the Legislature to deal with this problem, including the adoption of regulations regarding illegal false or misleading advertising. This will enable the Board to take effective enforcement action. The Joint Committee also recommends that the Board provide a progress report on implementation of this plan to the Committee by October 1, 2000.*

Comments: A December 1998, California Public Interest Research Group (CALPIRG) report indicated that deceptive advertising was rampant in the California pest control industry. Specifically, CALPIRG found that companies were illegally advertising pesticide treatments as safe and harmless and environmentally friendly. Through its research, CALPIRG claims to have found “more than 350 deceptive advertisements from approximately 150 different pest control companies.” CALPIRG’s charges became an issue during the Board’s budget hearings in 1999-2000, where concern was raised that the Board was not sufficiently addressing the issue of false or misleading safety or environmental claims.¹ In response to these concerns, the Board committed to the following plan:

- Notify all licensees of the need to comply with all applicable state and federal laws.
- Notify all 150 companies identified in the CALPIRG report that they may be in violation of law.
- Create regulatory guidelines to address false and misleading advertising.
- Prepare an article for the Board’s April 2000 newsletter addressing the CALPIRG report and recommending that companies review their advertising practices.
- Create a liaison position between the Board, the Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners (CAC) to help monitor company advertising.
- Continue work to eliminate any jurisdictional problems between the DPR and the CAC concerning false and misleading advertising.
- Continue working with the industry trade association, Pest Control Operators of California, to encourage pest control companies to come into voluntary compliance with the laws regarding false and misleading advertising.

Based on this plan, it appears that the Board has made progress in addressing the issue of false and misleading advertising.

ISSUE #4. (ESTABLISH A PLAN TO ADDRESS OVER-CALLING OR UNDER-CALLING OF CORRECTIVE WORK?) There has been some concern about pest control companies either recommending or performing excessive corrective work (“over-calling”), or failing to identify problems in need of corrective work during an inspection (“under-calling”).

Recommendation #4: *Given that under-calling and over-calling remain a major source of consumer complaints, the Joint Committee and the Department recommends that the Board establish a plan to address both problem areas and explore joint enforcement efforts with the Department of Real Estate.*

Comments: During the Board’s prior sunset review, concern was expressed that pest control companies were performing excessive corrective work (over-calling). However the Board determined that incomplete inspection work (under-calling) was a bigger problem than overcalling. Under-calling is harmful to consumers when structural pest control problems are not properly identified or corrected prior to the sale of a property. This situation can arise from inappropriate relationships between pest control companies and realtors. Given that under-calling and overcalling remain a major source of consumer complaints, the Department recommends that the Board establish a plan to address both problem areas and explore joint enforcement efforts with the Department of Real Estate.

¹ It should be noted that the Board has taken enforcement actions against companies making false claims about alternative pest control methods. Specifically, the Board has won penalty awards totaling \$1.2 million and notified licensees and the news media about new advertising guidelines.

ISSUE #5. (COMBINE LICENSING CATEGORIES AND EXAMINATIONS?) Could some of the Board's ten licensing examinations be combined, as well as certain license categories, to reduce costs associated with examination development and administration?

Recommendation #5: *The Joint Committee recommends that the entire examination and licensing programs be reviewed by the Board. The Board should conduct a study of both programs during its Strategic Planning session this year. A report should be provided to the Joint Committee by October 1, 2000, on any changes that would be appropriate for these programs.*

Comments: The Board licenses three classes of licensees (applicators, field representatives, and operators) in each of four branches of structural pest control – Branch 1/Fumigation, Branch 2/General Pest, Branch 3/Wood Destroying Organisms & Termites, and Wood Roof Cleaning and Treatment. There are no educational or experience requirements for applicators. There are no educational prerequisites for field representatives, but there are experience prerequisites that vary depending on the particular branch of pest control in which licensure is sought. And there are both educational and experience prerequisites for pest control operators. All three classifications must pass a different licensing examination.

The Board administers a different state-developed examination for almost every licensing category in each branch (10 exams total: 2 applicator, 4 field representative, and 4 operator.) While the Board's revenues and fund condition are more than satisfactory, examination fees do not cover the full cost of providing examinations and processing applications. License fees supplement, but do not cover the full costs. The Joint Committee has recommended for all other boards that license fees not be used to supplement applicant and examination costs. That these fees should instead be used for programs related licensee costs. It appears as if some of the 10 separate examinations could be combined and reduce the costs associated with its examination development and maintenance. The Board, however, would like to first review its entire examination and licensing programs during its Strategic Planning session this year. The Board believes that it may be able to combine certain license categories and also particular examinations. A final report could be provided to the Joint Committee by October 1, 2000.

ISSUE #6. (OCCUPATIONAL ANALYSES OF EXAMS NECESSARY?) Low passage rates on some of the Board's examinations have led to concerns about the validity of these examinations and the need for occupational analyses for certain Board examinations.

Recommendation #6: *The Joint Committee recommends that the Board should provide a progress report to the Joint Committee by October 1, 2000, on completing the occupational analyses for specified examinations.*

Comments: The Board anticipates that it should complete the occupational analyses, exam validations and updating for all of its licensing examinations by July 2000.

ISSUE #7. (REQUIREMENTS FOR LICENSURE ADEQUATE?) Very low and high passage rates of the Board's examinations, and repeated test taking, raises concerns whether the minimum requirements for particular license classifications are adequate, and whether they assure that licensees have the minimum knowledge and skills necessary to perform competently.

Recommendation #7: *The Joint Committee recommends that the Board should address this issue along with its review of the entire licensing and examination programs, and report to the Joint Committee by October 1, 2000, on any changes which may be appropriate.*

Comments: As noted previously, no education or experience is required to obtain an applicator license, only passage of a branch-related license exam. For a field representative license there is no educational requirement, but applicants must have some experience that varies depending upon the particular branch of pest control and must pass a branch-related license exam. And there are educational, experience, and license exam prerequisites for licensure as a pest control operator. Experience obtained as a field representative is used to qualify for the operator's license – the highest license level.

According to the Board's report, the average passage rate on its field representative examinations has been between 37% and 32% from 1995/96 to 1998/99. The average passage rates on its operator examinations have been between 29% and 24% during those same four years. And the average passage rates for its applicator examinations have been between 88% and 85%. While the low passage rates, particularly on the field representative license examinations, have led to concerns that the exam may be testing for more than minimum competency, there is also a concern that the low passage rates on the license exams may reflect a lack of basic knowledge of structural pest control and the laws related thereto. Given the existence of misleading and deceptive advertising, and "overcalling" and "under-calling," this latter concern may well be valid.

The lack of educational prerequisites for the first two license levels (applicator and field representative) appears to place a heavy reliance on experience and passage of the license exam to assure minimum competence. It is unknown whether there is a significant problem with applicants repetitively taking a license exam prior to passage – possibly reflecting more on an ability to be familiar with exam questions rather than having the minimum knowledge and skills necessary to perform competently.

The Board has indicated that it has no scientific data regarding whether its licensees are receiving adequate training or education, but believes this issue should be addressed. It again plans to include this as part of its Strategic Planning session this year and a final report could be provided to the Joint Committee by October 1, 2000.

ISSUE #8. (REQUIREMENTS FOR CONTINUING COMPETENCY ADEQUATE?) It is unclear if the current mandatory continuing education is sufficient to assure continuing competency of the Board's licensees.

Recommendation #8: *The Joint Committee recommends that the Board should address this issue along with its review of the entire licensing and examination program, and report to the Joint Committee by October 1, 2000, on whether examination for continuing competency would be appropriate.*

Comments: Pest control licenses are issued for three years. Continuing education has been a requirement for license renewal since 1981. Currently, all structural pest control applicators, field representatives, and operators must complete continuing education (CE) coursework requirements as specified by the Board regulation. As an alternative, applicators may take the applicator's license examination for their particular branch, while operators and field representatives may pass an exam

administered by the Board that is designed to test the licensee's knowledge of developments in the field of pest control since the issuance of the licensee's license.

During the Board's 1996 sunset review, it indicated that measuring the correlation between competency and continuing education is difficult. The Board noted at that time that nearly all aspects of pest control relate to the health and safety of the consuming public, and that new types of pest control methods and frequent changes in pest control laws and regulations continue to emerge. The Board also noted that one major criterion the Board uses for license reinstatements is whether the former licensee has kept up with the technological and legal changes since he or she last practiced.

Since the need for continuing competency in this area is critical, and there is no way for the Board to assure that the continuing education has provided the requisite knowledge and skills necessary for continued practice, the Board may want to consider requiring the examination it now provides as an option to those renewing their license, rather than just relying on completed course work of the licensee.

[The Board has responded by stating that it will also address this issue during its Strategic Planning session.]

ISSUE #9. (NEED FOR INCREASED OFFICE RECORD CHECKS?) Due to major changes in collection of inspection reports by the Board, it may be necessary to increase local office checks of inspection reports maintained by pest control companies.

Recommendation #9: The Joint Committee recommends that the Board should increase office record checks of pest control companies to assure that inspections and work being completed is in compliance with current law and regulations of the Board. The Board should seek an additional investigator to increase office record checks.

Comments: Pest control companies were required to physically file inspection reports and notices of work completed with the Board on a daily basis. As a result the Board received and attempted to file some 8000 documents from pest control companies each day! During the previous sunset review of the Board in 1996, it was determined that the Board was seriously backlogged in filing this mountain of paperwork. Since there are others (pest control companies, customers, lenders, etc.) who also receive copies of these reports anyway, and that these reports were serving no useful purpose in pursuing enforcement actions, the Joint Committee recommended elimination of the requirement that they be filed with the Board.

This is a major change in the way inspection reports are to be maintained. Pest control companies will now only retain them. However, more oversight and office record checks may now be necessary to assure companies are maintaining the appropriate inspection reports and paying the necessary fees. The Board now conducts over 700 office records check per year. It is requesting one additional investigator to perform twice as many office records checks. This will help ensure that companies are in compliance with the new program. Since the greatest percentage of Board revenue is derived under this new program, it is extremely important that companies are in compliance.

ISSUE #10. (INCREASE SPENDING ON ENFORCEMENT AND REDUCE FEES?)

Since the Board has over one year of reserves, should the Board increase its expenditures on its enforcement program and reduce stamp fees charged to licensees?

Recommendation #10: *The Joint Committee recommends that the Board should increase its spending authority on its enforcement program. The Board should report to the Joint Committee by October 1, 2001, on whether stamp fees could be reduced. This should allow a sufficient opportunity for the Board to determine its revenue base after implementing its new report-filing program, and consider other alternatives to the current stamp fee charged to pest control companies.*

Comments: The Board has more than sufficient reserves in its fund should it need additional resources for enforcement, such as one additional investigator. The Board states that its fund “reserve” (in number of months of operation) was 15.3 months at the end of FY 98/99, and is projected to be 13.3 months by the end of FY 02/03 in spite of several reductions in the pest control stamp fees which provide the bulk of the Board’s revenues. Generally, the recommended guideline for fund reserves is between three to six months of yearly budget expenditures. If reserves continue to be high, then the Board should put in place a plan to reduce stamp fees for pest control companies. However, it should wait until the end of fiscal year 2000/2001, to determine if any changes in revenue have occurred due to implementation of the new report filing program. The Board should also consider whether there may be some other way to collect fees rather than relying on the current stamp fee process.

ISSUE #11. (TRANSFER RESEARCH PROGRAM TO ACADEMIC INSTITUTION?)

Should the research program of the Board be transferred to an academic institution to determine which research projects involving pest control should be funded?

Recommendation #11: *The Joint Committee recommends that the Board should maintain the research fund, but the responsibility for determining which research project should be funded should be transferred to an academic/research institution, that is far more qualified to deal with contractual issues surrounding research projects involving entomology, chemicals and pest control devices.*

Comments: The Board currently collects fees from pest control companies for research purposes that amount to around \$80,000 to \$90,000 per year. The Board waits till there are sufficient funds to undertake meaningful research projects, and then chooses appropriate research projects with input from the profession. The Board has indicated that this function does not fit well within the Board’s regulatory role, and that they do not always have the expertise to determine which research projects are more appropriate than others. There is also a problem in attempting to draft appropriate requests for proposals, and in approving contracts through the Department because of the lack of experience in this area. It has indicated that an academic/research institution with expertise in the areas of structural pest control, entomology and chemical usage would be more qualified to make such decisions and be able to adequately monitor such research projects.